Filed 4/17/19 Conservatorship of D.B. CA2/7

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

Conservatorship of the Person D.B.	B282875 (Los Angeles County Super. Ct. ZE040901)
BRIAN B., Petitioner and Respondent, v. D.B., Appellant.	

APPEAL from the proceedings appointing D.B.'s son, Brian B. as guardian. Daniel J. Juarez, Judge. Affirmed.

Law Offices of Jean Matulis and Jean Matulis for Appellant.

Ellen S. Finkelberg for Petitioner and Respondent.

D.B. appeals from proceedings finding him gravely disabled and appointing his son Brian B. guardian. After hearing testimony, the jury made unanimous findings, supported by substantial evidence. We affirm.

FACTUAL AND PROCEDURAL HISTORY

D.B. is a veteran who suffers from bipolar disorder. On September 8, 2016, his son brought him to the Veterans Affairs Medical Center (VA) in Los Angeles, where he was admitted on a psychiatric hold. (Welf. & Inst. Code, § 5150.)[1] The VA referred D.B. to the Los Angeles County Department of Mental Health, Office of the Public Guardian, which petitioned for a mental health conservatorship investigation, and sought a temporary conservatorship.

According to the petition, at the time of his admission to the VA, D.B. was unable to describe the events of the previous days; his son reported he had stopped taking his medication. This admission was D.B.'s seventh admission to the VA in a year; he had more than 35 admissions since 1995.

On September 15, 2016, the Office of the Public Guardian filed a petition for the appointment of a conservator, with a request for temporary conservatorship. The court appointed the Office of the Public Guardian the temporary conservator, and appointed the public defender to represent D.B.

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[1] Further statutory references are to the Welfare and Institutions Code.

1. The Initial Hearing and Appointment of Conservator

The court conducted a hearing on the petition on October 5, 2016. Before testimony was taken, D.B., through counsel, requested a jury trial, acknowledging that a jury trial could not take place earlier than January 2017. Deputy County Counsel, representing the Public Guardian, presented testimony from Dr. Laura Halpin, D.B.'s treating psychiatrist since his admission to the VA.

Dr. Halpin testified that she had seen D.B. every working day, and had reviewed his charts and records. Her diagnosis was bipolar disorder, acute mania, with psychosis. She was the admitting psychiatrist, and explained that, on admission, D.B. was rambling in his response to questions, was reported not to have slept for days, and had disorganized thoughts, impulsive behavior, and grandiose delusions. She reported that his judgment was poor, and that he had no insight into his illness. She concluded that he was gravely disabled, and unable to provide for his basic needs. She was concerned that, if released, he would not continue to take his medication while living at home, as evidenced by seven hospitalizations in a twelve-month period.

Brian B., D.B.'s son, then testified on behalf of his father. He explained that on September 8, he had picked up his father from the criminal courts following an arrest for vandalism. While he was willing to take care of his father in the home they shared when the doctors indicated he was ready to come home, he wanted his father under a conservatorship to provide a safety net.

D.B. then testified that he would follow up with outpatient treatment and medication if he were released from the hospital, but denied that he has any mental illness.

After argument by counsel, the court found D.B. to be gravely disabled, and granted the petition for conservatorship, appointing Brian B. as conservator. The court found that D.B. waived speedy trial and ordered jury trial setting on January 9, 2017. The court relieved the public guardian, and appointed counsel for Brian B. to represent him as conservator at the jury trial. Counsel for D.B. did not object to the orders.

On January 9, because there were cases with priority for trial, the court continued the trial until February 14, over defense objection. On that date, defense counsel was unavailable, and the court continued the matter for trial setting to February 21. On that date, without objection by counsel, the court set the trial for March 13, 2017.

2. The Jury Trial

A jury was sworn, and trial commenced on March 14, 2017. Both counsel made opening statements, after which counsel for Brian B., as petitioner, called Dr. Freedman-Harvey to testify. He was qualified as an expert, and testified that he had examined D.B., most recently in February, had reviewed his charts and records, and had spoken with the staff at the facility where D.B. was living. Based on all of those circumstances, Dr. Freedman-Harvey diagnosed D.B. with bipolar disorder. He described D.B. as someone who becomes paranoid, with grandiose delusions. He testified that D.B. would not take his medication if he were released from the facility. He stated his opinion that D.B. would be unable to provide his basic needs without the conservatorship, because, when living in his home, he stops

medication, becomes manic and paranoid, and ignores his basic needs. Dr. Freedman-Harvey concluded that D.B. was gravely disabled and should remain under conservatorship. On cross examination, he acknowledged that D.B. had income, a residence, and access to VA services.

Brian B. testified that he was currently, and in the past, had been his father's conservator. Prior to his hospitalization and subsequent placement, D.B. had resided at home with Brian B. In the week prior to his admission to the VA in September, D.B. had wandered sporadically, and then had failed to come home; Brian B. discovered he had been arrested. Brian B. obtained D.B.'s release on the condition that he be taken to the VA. At that time, D.B. was frail and dirty. On a recurrent basis prior to these events, D.B. would fail to take his medication regularly, usually beginning weeks after a discharge from hospitalization. Brian B. described the symptoms that his father developed when he failed to take his medication, and the circumstances of previous hospitalizations in 2016.

Brian B. testified that he would allow his father to live at home, but would need a conservatorship to allow him to protect his father.

D.B. testified in his own behalf. He explained his military service, and eligibility for VA benefits, along with other income that he receives. He stated that he would continue psychiatric treatment if released, and would continue to take his medication. He stated his belief that he is not gravely disabled.

After closing argument, instructions and deliberations, the jury returned a unanimous verdict finding D.B. gravely disabled. The court continued the conservatorship, with a termination date of October 4, 2017. D.B. appealed.

3. The Stipulated Extension of the Conservatorship

On September 20, 2017, D.B. appeared in court, and asked for the conservatorship to be continued for an additional year. The court received the physician's declaration in evidence, found D.B. gravely disabled, and granted the petition.

DISCUSSION

The Lanterman-Petris-Short Act (LPS or the Act) permits the appointment of a conservator for up to a one-year period for a person determined to be gravely disabled within the meaning of the Act. (§ 5350 ["A conservator of the person, of the estate, or of the person and the estate may be appointed for a person who is gravely disabled as a result of a mental health disorder or impairment by chronic alcoholism."].) As relevant in this case, gravely disabled means: "A condition in which a person, as a result of a mental health disorder, is unable to provide for his or her basic personal needs for food, clothing, or shelter." (§ 5008, subd. (h)(1)(A).) The Act provides that the person who is the subject of the petition has the right to demand a court or jury trial on the issue of grave disability. (§ 5350, subd. (d); *In re Conservatorship of Kevin M. (*1996) 49 Cal.App.4th 79, 84.)

A. We Address the Appeal on the Merits

Respondent urges us to determine that the appeal is moot, in light of the fact that the challenged order of conservatorship expired in 2017. As a matter of law, such orders terminate in one year, making this a common occurrence. As this Court has previously noted, the mootness argument is one that is uniformly raised, and uniformly rejected, by courts of appeal. (*In re Conservatorship of George H.* (2008) 169 Cal.App.4th 157, 161, fn. 2.)

This case, however, presents additional grounds for a determination of mootness because D.B. stipulated to the continuance of his conservatorship without contesting the determination of grave disability, and without seeking a change in conservator. Nonetheless, because the challenge raises issues that may recur, but otherwise evade review, we will address the merits of D.B.'s appeal. (See *In re Conservatorship of Carol K.* (2010) 188 Cal.App.4th 123, 133 [collateral consequences that remain sufficient for review]; *In re Conservatorship of David L.* (2008) 164 Cal.App.4th 701, 708-709 [question of applicability of *People v. Marsden* (1970) 2 Cal.3d 118 made determination on merits appropriate].)

B. Substantial Evidence Supports The Jury's Finding That D.B. Was Gravely Disabled

D.B. argues on appeal that the evidence placed before the jury was insufficient to support its finding that he was gravely disabled. The record below, however, supports the jury's verdict.

1. The Standard of Review

To obtain a conservatorship, the proponent must prove grave disability beyond a reasonable doubt. (*In re Conservatorship of Roulet* (1979) 23 Cal.3d 219, 225-226; *In re Conservatorship of Johnson* (1991) 235 Cal.App.3d 693, 696.)

"In reviewing a conservatorship, we apply the substantial evidence standard to determine whether the record supports a finding of grave disability. The testimony of one witness may be sufficient to support such a finding. [Citation.] We review the record as a whole in the light most favorable to the trial court judgment to determine whether it discloses substantial evidence."

(*In re Conservatorship of Carol K., supra*, 188 Cal.App.4th at p. 134.)

2. The Record Supports the Finding

Dr. Freedman-Harvey testified that, based on his evaluation of D.B. and review of his records, D.B. had a mental health disorder which rendered him unable to provide for his basic or personal needs. He pointed to facts showing that D.B. did not remain compliant with his medication when he lived at home, and ignored his basic needs. D.B.'s history of multiple hospitalizations, and behavior after release, demonstrated to Dr. Freedman-Harvey that he was gravely disabled.

This testimony was supported by the evidence provided by Brian B. with respect to his father's inability to remain medically compliant and to care for himself. Further, while a finding of grave disability may not be made if the "person can survive safely without involuntary detention with the help of responsible family, friends, or others who are both willing and able to help provide for the person's basic personal needs for food, clothing, or shelter" (§ 5350, (e)(1), the trier of fact may not make that finding unless the family member or friend indicates in writing their "willingness and ability" to provide that assistance. (§ 5350, subd. (e)(2).) Here, Brian B. testified that he would be unable to provide the assistance without a conservatorship, and no other family member or friend came forward to offer assistance. (Cf. *In re Conservatorship of Jesse G.* (2016) 248 Cal.App.4th 453, 462-463 [friend testified that proposed conservatee could live with him and that he would assist with all issues and articulated viable plan; sufficient to prevent finding of grave disability].)

D.B. correctly points out that his own testimony demonstrated his intent to remain compliant with medication

and treatment, and to seek services when necessary. It was undisputed that he had financial resources, and the ability to access care at the VA. He did, however, deny that he had mental health issues.

Notwithstanding that testimony, there was ample evidence from Brian B. and Dr. Freedman-Harvey to support the jury's finding. (See, e.g., *In re Conservatorship of Johnson, supra*, 235 Cal.App.3d at pp. 697-698 [testimony by qualified physician that party had history of non-compliance with medication and no insight into mental health issues sufficient].)

C. The Delay of the Jury Trial Did Not Prevent A Fair Proceeding

D.B. asserts that his statutory right to a jury trial within 10 days of his demand requires reversal. (§ 5350, subd. (d)(2).) This argument fails for two independent reasons.

First, the time limitation set forth in the statute is not mandatory, but is directory in nature. (*In re Conservatorship of James M.* (1994) 30 Cal.App.4th 293, 298-299.) In that case, the conservatee requested that the petition be dismissed because the trial was not held within the statutory period. The court found that, unless the legislature clearly expresses a contrary intent, statutory time requirements are generally directory. With respect to section 5350, subdivision (d), the statute provides no consequence for the failure to commence the trial within the 10-day period, and the court declined to divest a trial court of jurisdiction by implication in the absence of an express command. The court recognized the interest of a proposed conservatee in a prompt resolution, but held this interest to be protected by the trial court's power to dismiss the petition where the delay is shown to be prejudicial. The court found no prejudice in that

case, where the delay was due to the inability to transport the conservatee to court.

Here, D.B. has not asserted any facts to demonstrate that he was prejudiced by the delay, caused here by court congestion and his own counsel's inability to appear on one of the dates set for trial. Moreover, while there is the potential for prejudice where the proposed conservatee is unnecessarily detained in a facility, that is not the case here. As described above, there was sufficient evidence of disability at the proceedings now being challenged and, at the termination of the term of the conservatorship, D.B. stipulated to its reinstatement for an additional year.

Second, D.B. forfeited any objection to the delayed proceedings. As described above, D.B. failed to object to the initial setting for jury trial on January 9, 2017, although he asked why the delay was necessary. The minute order documented a speedy trial waiver on that date; counsel never challenged that finding. On January 9, when the court indicated that a continuance was necessary because there was no courtroom available, counsel objected, but did not claim that the delay violated the statute and that the court had, as a result, lost jurisdiction to proceed; counsel also did not assert that his client's rights would be prejudiced in any manner by the delay. Counsel's absence caused the next, and final, continuance, to which no party objected.

A party may waive the technical issues concerning the demand for jury trial and the timing of the trial in LPS cases. Consent, even to an act in excess of the court's jurisdiction, may preclude a later challenge. (*In re Conservatorship of Kevin M., supra,* 49 Cal.App.4th at pp. 91-92 [doctrines of estoppel and

waiver allow court to proceed in section 5350 process even when demand for trial is untimely and time deadlines for hearing are exceeded]; *In re Conservatorship of Joseph W.* (2011) 199 Cal.App.4th 953, 967 [waiver or forfeiture to objection concerning jury trial demand by failing to object, appearing at, and participating in trial].) In this case, D.B.'s failure to object now precludes his argument that the trial court was without jurisdiction to conduct the jury trial in which he participated.

D. Brian B. As Conservator, Proceeded Properly In Conducting The Jury Trial

D.B., in his final argument, asserts that all section 5350 proceedings must be conducted by the designated public entity; accordingly, he argues that allowing Brian B. to conduct the jury trial violated the statute.

In *In re Conservatorship of John L.* (2010) 48 Cal.4th 131, the Supreme Court described the important procedural protections surrounding LPS proceedings. Included within those protections is the requirement that each county designate an agency to investigate whether conservatorship is appropriate in a given case, and to report to the court on what is necessary. (*Id*. at pp. 142-143.) LPS proceedings must be initiated by the investigator designated by that agency. (*Id*. at p. 144.)

The procedural protections described in *John L.* protect the due process rights of a conservatee. As such "In conservatorship cases, we balance three factors to determine whether a particular procedure or absence of a procedure violates due process: the private interests at stake, the state or public interests, and the risk that the procedure or its absence will lead to erroneous decisions." (*In re Conservatorship of John L., supra,* 48 Cal.4th at p. 150.)

D.B. cites *Kaplan v. Superior Court* (1989) 216 Cal.App.3d 1354, in support of his argument that his rights were violated when, after initiation of the proceedings, and prosecution of the initial hearing were conducted by the public agency, Brian B., as conservator, was permitted to conduct the jury trial.

In *Kaplan*, a private person instituted and proceeded on a LPS petition after the county's conservatorship investigatory officer declined to do so. Considering a writ petition, the appellate court found that only that investigatory officer was authorized to institute a judicial proceeding. *Kaplan, supra,* 216 Cal.App.3d at p. 1358.) Interpreting the statutory language, the court concluded: "The power to commence an LPS conservatorship has been expressly granted to the designated agency, here the public guardian, and the only person authorized to present evidence in support of the petition is the district attorney or county counsel." (*Id*. at p. 1360.) The court reasoned that "[a] vital element of this protective framework is the vesting in a public official the duty to investigate the need for a conservatorship which may lead to commitment, and the discretion to file a petition in light of that investigation." (*Ibid*.)

This case presents far different facts. Here, the public guardian investigated, found the need for a conservatorship, and presented evidence to the court, leading to a finding of grave disability and the appointment of the conservator. It was only after the public guardian engaged in that process that the court, having appointed Brian B. as guardian, relieved the public guardian from the future proceedings and appointed counsel for Brian B. to assist in the upcoming jury trial. (See *In re Conservatorship of Kevin M., supra*, 49 Cal.App.4th at p. 85

["private counsel may enter the picture when, as in this case, a private conservator is appointed."].)

D.B. made no objection in the trial court to this procedure. Even had the participation of Brian B. in the jury trial been improper, D.B. forfeited that error by failing to object; had he timely objected, the trial court would have had the opportunity to correct any error in relieving the public guardian. (*In re Conservatorship of Joseph W., supra*, 199 Cal.App.4th at p. 967.)

Even had D.B. not forfeited this argument, the three *John L.* factors do not support his claim for relief. His private interest in not being subjected to an unnecessary conservatorship is indeed strong, but, as indicated by his stipulation to renew the conservatorship, the conservatorship does not appear to have been unnecessary. The state's interest in ensuring that the process is not abused for private purposes, as discussed in *Kaplan*, is also strong, but is satisfied where, as here, the public guardian commences the proceedings and proves to the court that the grounds for appointment of a conservator are satisfied. Finally, the record in this case, and the subsequent stipulated renewal, demonstrates that the risk of an erroneous decision is not present. As such, D.B. has not demonstrated any error requiring reversal of the court's orders.

DISPOSITION

The order appointing the conservator is affirmed. Each party shall bear its own costs on appeal.

ZELON, Acting P. J.

We concur:

SEGAL, J.

FEUER, J.